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HIGHLY CONFIDENTIAL - M. KLEIN
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----X
* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF MICHAEL KLEIN

New York, New York

September 12, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24546

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HIGHLY CONFIDENTIAL - M. KLEIN
September 12, 2009
10:40 a.m.

HIGHLY CONFIDENTIAL deposition
of MICHAEL KLEIN, held at Jones Day
LLP, 222 East 41st Street, New
York, New York, before Kathy S.
Klepfer, a Registered Professional
Reporter, Registered Merit Reporter,
Certified Realtime Reporter, Certified
Livenote Reporter, and Notary Public
of the State of New York.

HIGHLY CONFIDENTIAL - M. KLEIN

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HIGHLY CONFIDENTIAL - M. KLEIN
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1 HIGHLY CONFIDENTIAL - M. KLEIN
2 the cash paid for the rights to operate the
3 business.

4 Q. Can you explain to me what you mean
5 when you say "cash paid for the rights to
6 operate the business"?

7 A. As best as I can.

8 Q. Sure.

9 A. The view was that the business didn't
10 have any value as an ongoing business; that if
11 you were going to step in and take on 10,000
12 employees and whatever liabilities to operate
13 that business, when you had no idea of what
14 revenues would be because there's no -- (A) you
15 just have no knowledge, (B) you have no
16 knowledge of what clients or customers think or
17 feel of you at that point in time, you don't
18 know who's going to stay and who's not going to
19 stay, whether that's clients, customers
20 counterparties, you don't know what had taken
21 place in the week prior to that, it was a
22 very -- there was a lot of reasons to believe
23 that this was not an ongoing business.

24 So the view at the outset was there's
25 no value for the ongoing business, so the

Q. You referred to purchase price
negotiations. Were you involved in those?

A. I was involved in the discussions on
the elements of the building and the elements of

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1	HIGHLY CONFIDENTIAL - M. KLEIN	1	
2	discussion as to what then cash was paid for,	2	
3	quote, the rights to do this business, which	3	
4	really was the transaction, is how do you end up	4	
5	stepping into those, if you will, operations of	5	
6	the brokerage business, as it turned out, the	6	
7	North American brokerage business. That's what	7	
8	I'm referring to, which became the \$250 million	8	
9	number.	9	
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20		Q. You understand that an Asset Purchase Agreement was executed between Lehman Brothers Holdings, Inc., Lehman Brothers, Inc., LB 745, LLC and Barclays Capital, correct?	
21		A. Yes.	
22		Q. At the time that agreement was	
23			
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1 HIGHLY CONFIDENTIAL - M. KLEIN
2 finalized -- and you understood that there was
3 one that was actually signed by the parties,
4 correct?

5 A. I understood that there was an
6 agreement between the parties, yes.

7 Q. Without regard to the particular
8 exhibit in front of you, did you see that
9 agreement at or around the time it was signed?

10 A. I did not review this agreement at or
11 around the time it was -- or, I don't recall
12 reviewing this agreement at or around the time
13 it was signed.
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PAGES 70-93 REDACTED

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Q. That's the meeting I'm asking about. Is this the meeting on Friday morning?

A. Again, I don't recall which specific. I know that on Friday we had to clean up the issues and or not, I mean, it was that much of a make-or-break event, and the issue as it had been described to me by my client was we have a problem in that this is, given the significant removal of positions and obviously the impact as a result on the, quote, business deal, we need to be very clear that (A) this is a different -- putting 45 billion of cash capital now to buy assets and, secondly, we don't have the same value. So I was instructed to go in and express that we needed more assets. So that's the meeting I'm referring to.

REDACTED

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HIGHLY CONFIDENTIAL - M. KLEIN term, but the back end of Barclays in terms of how they were looking at the construct for themselves, I don't know what the accounting was, but I was told you need to go in and get more assets, this won't work.

And I think there was a great degree of trepidation. It was already complicated enough because the integration issues. It was already complicated enough because of the market issues. It was now public. It was complicated enough because of the Europe, Asia, everything separating away. It was now already a very complicated event to have what was then this meaningful change and, thus, have a hit to them and that additional incremental risk, and in addition, owning the risk on disposing of what were this 45 billion of securities, there was quite a lot of fear, and at that point there was a sense that this transaction just might not occur.

Now, of course, that happened many times over the couple of weeks, the sense that this might not occur, but it was very acute, and I was told you need to -- we need to make it

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Q. So did you make that request? Did you come in and say -- did you, in sum or substance, did you make it known to Lehman that you needed more value?

A. Well, I made it known to the parties that were involved that there needed to be more assets, because if there weren't more assets, the transaction couldn't take place.

Now, to say "I," it was made known and I was part of discussions that were around what could solve that gap. I don't know that I was the person that specifically stated it or not.

Q. How big a gap had to be made up?

A. The quantification of what I was told was that we had an understanding that the value of the assets, if you will, the loan, the \$45 billion loan, was -- the collateral base could not be assured that that would solve that; that, secondly, we then needed to go and get more assets. No one gave me an instruction that said you need to get X or Y, but we need to go get more.

I wasn't, because I wasn't involved in the, if you will, the -- I may not use the right

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HIGHLY CONFIDENTIAL - M. KLEIN very clear if there's not other assets, we can't get this done.

Q. You have to make it very clear that if there are not more assets, this won't get done, how do you do that without being able to tell Lehman this is how much more we need? Does that present an obstacle here?

A. I don't want to hypothesize.

Q. Let me try this another way. Your instructions are to make it clear to Lehman that if there are not more assets to be added, that it's possible the deal won't get done; is that correct?

A. My recollection of both those discussions and at least the instructions that I got were this transaction was going to fail because of what was the diminution in the original plan. Now, that's -- those are the communications that I was part of.

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oOo

MICHAEL KLEIN

Subscribed and sworn to
before me this day
of 2009.

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HIGHLY CONFIDENTIAL - M. KLEIN
CERTIFICATE
STATE OF NEW YORK)

: ss

COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered
Merit Reporter and Notary Public within and
for the State of New York, do hereby
certify:

That MICHAEL KLEIN, the witness whose
deposition is herein before set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

I further certify that neither the
deponent nor a party requested a review of
the transcript pursuant to Federal Rule of
Civil Procedure 30(e) before the deposition
was completed.

In witness whereof, I have hereunto
set my hand this 12th day of Sept., 2009.

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WITNESS:	EXAMINATION BY	PAGE
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EXHIBITS: PAGE

Exhibit 424, Subpoena for Rule 2004 13

Examination

Exhibit 425, a document bearing Bates Nos. 124

BCI-EX-00077378 through 379

Exhibit 426, a document bearing Bates Nos. 149

BCI-EX-00080661

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HIGHLY CONFIDENTIAL - M. KLEIN

NAME OF CASE: In re Lehman Brothers Holdings, Inc.

DATE OF DEPOSITION: September 12, 2009

NAME OF WITNESS: Michael Klein

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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